IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2830 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Applicant
(Org.Complainant)

Versus

Mohd.Altaf Siddique Babu ..Respondent
(Org.Accused no.2)

Mrs.P.H.Kantharia APP for the State.

Mr.P.C.N.Agrawal for respondent no.1.

Coram : B.H.Marlapalle &
R.S.Mohite,JJ

Date : 15.02.2007.

PC

1. Heard Mrs.Kantharia the learned APP for the State.

2. The State is praying for leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned 6th Ad-hoc Additional Sessions Judge, Sewree, Bombay in Sessions Case No.73 of 1991. By the judgment and order dated 08.02.2006 the learned Additional Sessions Judge was pleased to acquit accused no.2 Mohd. Altaf Siddique Babu for the offences punishable under Sections 120(B) read with sections 395, 147, 450 & 341 read with section 149 of IPC.

3. There are 2 incidents in question that had taken place separately on 24.11.1988 and 10.12.1988 and the FIR came to be filed for the first time on 20.10.1989. The trial Court noted that though the format Exh.27 Complaint/application was dated 12.12.1988 addressed to Faltan Road police station the explanation for registering the FIR on 20.10.1989 was not placed satisfactorily by the prosecution and therefore, the prosecution case itself was doubtful right from its inception. In addition, the FIR at Exh.27 was in a typed format. The contents therein also indicated that there were civil disputes between the parties giving reference to letter of surrender of the possession of the suit premises by deceased accused Siraj Mistry. The trial Court formed the opinion that the complaint was by afterthoughts and the real dispute between the parties substantially was of civil in nature. In addition, it was the claim of the investigating agency that they had visited the premises on 10.12.1988 and had recorded the panchanama, the statements of the complainant and others but such record was not placed and there was nothing to draw an inference against the accused. On the other hand, the prosecution tried to shift the onus of proving their innocence on the accused rather than discharge their responsibility to prove the charge beyond doubt. The evidence of PW-1

Subhash Gandhi, PW-2 Chafe and PW-4 Gani was held to be un-reliable. We do not find any reason to hold that the view taken by the trial Court requires re-consideration by us.

4. Hence, there is no case made out for grant of leave to file appeal under Section 378(3) of Cr.P.C. and therefore, the application is rejected.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**